



Genesee & Wyoming Inc.  
13901 Sutton Park Drive South  
Suite 330  
Jacksonville, FL 32224

July 19, 2018

**Via Federal Express**

Attn: Compliance Tracker, AE-18J  
Air Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604

RE: Genesee & Wyoming Inc. Response to Environmental Protection Agency Request to  
Provide Information Pursuant to the Clean Air Act Dated June 4, 2018.

To whom it may concern:

I am writing on behalf of Genesee & Wyoming Inc., its subsidiaries and affiliated companies and custodians of records ("GWI") regarding the above-referenced Request to Provide Information Pursuant to the Clean Air Act ("Request"), dated June 4, 2018. Enclosed with this letter are two flash drives containing responsive materials. Flash Drive A contains materials provided in normal course, while Flash Drive B contains materials GWI has designated as confidential. GWI provides its responses below, subject to the following general objections:

1. GWI objects to the extent that this Request is overly broad, unduly burdensome, vague or ambiguous or to the extent it seeks information protected from disclosure by the attorney-client privilege, the work product doctrine, the privilege of self-evaluation or any other legally cognizable privilege or immunity.
2. GWI objects to the definition of "documents" as unreasonable, overbroad and unduly burdensome. It is unreasonable, if not impossible, to identify all "documents" responsive to the requests as that term is defined in the Request. GWI has conducted a diligent search and has provided, to the best of its ability, the information available to it that is responsive to the Request.
3. GWI objects to the definitions of "G&W," "you" and "your" in the Request. GWI is a holding company of short line and regional railroads located within the United States and

abroad. It does not have any employees by which to control these subsidiaries and relies on its subsidiary companies to conduct all operations. For purposes of this response, GWI is responding on behalf of its 108 railroads located in the United States. Foreign subsidiaries are not included in this response.

4. GWI objects to the definition of “railroad” as overly broad. GWI will include information related to any applicable switching carriers in its response; however, objects to their classification as a railroad for purposes of Surface Transportation Board jurisdiction.
5. GWI reserves the right to supplement its responses to the Request based upon discovery of new information of which GWI is not currently aware or has been unable to obtain by the deadline for response to the Request.

## **GWI RESPONSE TO EPA REQUEST 1**

- 1. Provide a detailed, clearly labeled map depicting all rail lines, rail yards, and rail maintenance shops owned, leased, and/or operated by G&W in the United States.**

GWI objects to the terms rail lines, rail yards and rail maintenance shop as vague and ambiguous. For purposes of this response, the following definitions were applied in gathering this information:

Rail lines—railroad track that is used for through trains or is the principal artery of the system from which branch lines, yards, sidings, and spurs are connected.

Rail yard—a system of tracks, other than main tracks and sidings, within defined limits used primarily for classification of trains, switching or storage of rail cars.

Rail maintenance shop—a facility that performs locomotive maintenance and inspections; also includes facilities that perform railcar repairs.

Subject to and without waving its objections, GWI responds as follows:

The files in folder “1\_MAPS,” Bates stamped GWI\_000001-000096, on Flash Drive A detail 106 of our 108 STB listed railroads in 93 maps. The two railroads not included are no longer operational. The maps also depict each railroad’s rail lines, rail yards, and rail maintenance shops owned, leased, and/or operated by GWI’s affiliate railroads in the United States.

### *Response provided by:*

Robert Holtz – VP, Operations, Central Region  
Blake Jones - AVP, Operations, Central Region  
David Bordner – VP, Transportation, Coastal Region  
Jason Bradt – VP, Operations, Coastal Region  
Derrick Wright – VP, Transportation, Midwest Region  
John Connelly - VP, Operations, Northeast Region  
Brian McClain - AVP, Operations, Northeast Region  
Brian Stussie - AVP, Operations Northeast Region

Kenneth Dziwulski – VP, Transportation, Southern Region  
William Keogh – VP, Transportation, Southern Region  
Kevin Haugh – VP, Transportation, Western Region  
Tammy McKay – Manager, Mechanical

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer  
Ken Glover, SVP, Safety  
Nicholas Pecenka, AVP, Safety and Reporting  
Richard Regan, SVP, Mechanical  
Eugene Evans, AVP, Mechanical  
Cary Hiles, Director, Safety & Security  
Derrick Mann, AVP, Compliance and Operating Practices

**GW I RESPONSE TO EPA REQUEST 2**

**2. Identify all Railroads that are directly or indirectly controlled by and/or affiliated with G&W. For each entity identified, provide the following:**

**a. name of Railroad;**

Subject to and without waving its objections, GWI responds as follows:

For a complete list of the railroads that are directly or indirectly controlled by and/or affiliated with GWI, please refer to the Excel spreadsheet “2a-Data.xlsx,” Bates stamped GWI\_000097-000099, included in the “2a” file folder under the “2\_RAILROADS” file folder on Flash Drive A.

*Response provided by:*

Nicholas Pecenka, AVP, Safety and Reporting

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer  
Chris Liucci, Chief Accounting Officer and Global Controller  
Allison Fergus, General Counsel and Corporate Secretary  
Ken Glover, SVP, Safety  
Richard Regan, SVP, Mechanical

**b. affiliation or relationship with G&W (e.g. owned by G&W);**

Subject to and without waving its objections, GWI responds as follows:

For each railroad’s affiliation or relationship with GWI, please refer to the Excel spreadsheet “2b-Data.xlsx,” Bates stamped GWI\_000100-000114, included in the “2b” file folder under the “2\_RAILROADS” file folder on Flash Drive A.



Additional information for 2b is also provided on tab #2b Subsidiary Ownership” in the same Excel document. This chart includes information that is not necessarily responsive, but that will aid the reader in fully understanding the ownership structure of relevant railroads. This list is broader than what is responsive to the request, as it includes non-railroads (as defined in the request). We are including the additional subsidiary information solely to ensure that the ownership structure for each entity affiliated with GWI included in the request is clear.

*Response provided by:*

Cary Hiles, Director, Safety & Security

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer

Ken Glover, SVP, Safety

Richard Regan, SVP, Mechanical

**c. number of employees;**

Subject to and without waving its objections, GWI responds as follows:

For each railroad’s number of employees, please refer to the Excel spreadsheet “2c-Data.xlsx,” Bates stamped GWI\_000115-000117, included in the “2c” file folder under the “2\_RAILROADS” file folder on Flash Drive A. The 108 relevant railroads operated in the U.S. employ a total of 2,833 employees as of June 26, 2018.

*Response provided by:*

Cheryl Huffland, Director, HR Information Systems

Mary Ellen Russell, Global Human Resource Officer

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer

Ken Glover, SVP, Safety

**d. Railroad class of operation (Class I, II, or III);**

Subject to and without waving its objections, GWI responds as follows:

For each railroad’s class of operation, please refer to the Excel spreadsheet “2d-Data.xlsx,” Bates stamped GWI\_000118-000120, included in the “2d” file folder under the “2\_RAILROADS” file folder on Flash Drive A.

*Response provided by:*

Chris Liucci, Chief Accounting Officer and Global Controller

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer

Allison Fergus, General Counsel and Corporate Secretary

**e. number of operating locomotives;**

Subject to and without waving its objections, GWI responds as follows:

For each railroad's number of operating locomotives, please refer to the Excel spreadsheet "2e-Data.xlsx," Bates stamped GWI\_000121-000123, included in the "2e" file folder under the "2\_RAILROADS" file folder on Flash Drive A.

*Response provided by:*

Tammy McKay, Manager, Mechanical

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer

Ken Glover, SVP, Safety

Richard Regan, SVP, Mechanical

**f. annual operating revenue for calendar 2017;**

Subject to and without waving its objections, GWI responds as follows:

GWI has designated its response to 2f as confidential. Therefore, it is included on Flash Drive B, with all other responsive materials that GWI has designated as confidential. The narrative response is in the document "GWI CONFIDENTIAL RESPONSE TO EPA REQUEST.pdf" and additional data is in the Excel spreadsheet "2f-Data.xlsx," Bates stamped GWI\_CONFIDENTIAL\_000001-000004, in the file folder "2f" under the "2\_RAILROADS" file folder.

**g. the location of each of those Railroad's rail lines/yard clearly labeled on the map in Request 1, denoting whether and where those rail lines are connected to any other rail carrier lines.**

Subject to and without waving its objections, GWI responds as follows:

For the location of each railroad's rail lines and yards, labeled on the map in request 1, please refer to the Excel spreadsheet "2g-Data.xlsx," Bates stamped GWI\_000124-000140, included in the "2g" file folder, under the "2\_RAILROADS" file folder on Flash Drive A. In that spreadsheet, tab "#2g Yards" lists the locations for GWI's affiliate railroads' yards. Tab "#2g Interchange Partners" addresses where GWI's affiliate rail lines connect to other rail carrier lines, specifically where cars can be interchanged. The maps provided in response to request 1 illustrate where GWI's affiliates' tracks intersect with the tracks of other carriers.

*Response provided by:*

Robert Holtz – VP, Operations, Central Region

Blake Jones - AVP, Operations, Central Region

David Bordner – VP, Transportation, Coastal Region



Jason Bradt – VP, Operations, Coastal Region  
Derrick Wright – VP, Transportation, Midwest Region  
John Connelly - VP, Operations, Northeast Region  
Brian McClain - AVP, Operations, Northeast Region  
Brian Stussie - AVP, Operations Northeast Region  
Kenneth Dziwulski – VP, Transportation, Southern Region  
William Keogh – VP, Transportation, Southern Region  
Kevin Haugh – VP, Transportation, Western Region  
Tammy McKay – Manager, Mechanical

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer  
Ken Glover, SVP, Safety  
Richard Regan, SVP, Mechanical  
Nicholas Pecenka, AVP, Safety and Reporting  
Cary Hiles, Director, Safety & Security  
Derrick Mann, AVP, Compliance and Operating Practices

### **GW I RESPONSE TO EPA REQUEST 3**

- 3. Provide G&W's total annual carrier operating revenue for calendar years 2016 and 2017, (after applying the Railroad deflator formula contained in 49 C.F.R. Part 1201), and total member of employees including all rail lines, regardless of size, held by G&W.**

Subject to and without waving its objections, GWI responds as follows:

GWI has designated its response to request 3 as confidential. Therefore, it is included on Flash Drive B, with all other responsive materials that GWI has designated as confidential. The narrative response is in the document "GWI CONFIDENTIAL RESPONSE TO EPA REQUEST.pdf" and additional data is in the Excel spreadsheet "3\_REVENUE-Data.xlsx," Bates stamped GWI\_CONFIDENTIAL\_000005-000008, in the "3\_REVENUE" file folder.

### **GW I RESPONSE TO EPA REQUEST 4**

- 4. Identify and explain in detail, G&W's classification (Class I, II, or III Railroad) under the Surface Transportation Board (STB) regulations. In your response, describe how G&W satisfies the requirements for its STB classification, and indicate the reasons why G&W believes it does not meet the remaining classifications.**

Subject to and without waving its objections, GWI responds as follows:

GWI has designated its response to request 4, specifically related to revenue as a parameter for classification, as confidential. Therefore, it is included on Flash Drive B, with all other responsive materials that GWI has designated as confidential. The narrative response is in the document "GWI CONFIDENTIAL RESPONSE TO EPA REQUEST.pdf" and additional data is in the Excel

spreadsheet "4\_CLASSIFICATION-Data.xlsx," Bates stamped  
GWI\_CONFIDENTIAL\_000009-000010, in the "4\_CLASSIFICATION" file folder.

## **GWI RESPONSE TO EPA REQUEST 5**

- 5. Provide the name and location of all locomotive shops that G&W owns, leases or controls and is capable of doing any work on locomotive engines. Provide also the name and location of any locomotive shops not under G&W control with which G&W contracts to have work done on any of its locomotive engines. Indicate the type and volume of work each of these shops performs on behalf of G&W.**

Subject to and without waving its objections, GWI responds as follows:

GWI objects to the term "locomotive shops" as vague and ambiguous. For purposes of this response, GWI applied the following definition in gathering responsive information: GWI defines a locomotive shop as a facility that performs locomotive maintenance and inspections. Please note that the list provided only includes facilities that meet this definition. Subject to and without waiving its objections, GWI responds as follows:

The document "5\_SHOPS-Data.xlsx," Bates stamped GWI\_000141-000148, in file folder "5\_SHOPS" on Flash Drive A details the locations of all locomotive shops GWI's affiliate railroads own, lease, or control. GWI's affiliate railroads do not name the locomotive shops, so they are listed with their corresponding railroad for reference. GWI affiliate railroads do not contract to have work done on any of their locomotive engines by any locomotive shops not under GWI control. Therefore, GWI does not have any work type or volume from each of these shops to report.

*Response provided by:*

Richard Regan, SVP, Mechanical  
Eugene Evans, AVP, Mechanical  
Tammy McKay, Manager, Mechanical

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer  
Ken Glover, SVP, Safety  
Cary Hiles, Director, Safety & Security

## **GWI RESPONSE TO EPA REQUEST 6**

- 6. Provide an explanation of whether, and if so, why, the "Small Railroad Provisions" of 40 C.F.R. 1033.610 (or any or other provision contained in 40 C.F.R. Part 1033, Subpart G) apply to G&W and/or any of its subsidiaries or holdings.**

Subject to and without waving its objections, GWI responds as follows:



The Small Railroad Provisions of 40 C.F.R. 1033.610 do not apply to GWI and/or any of its subsidiaries or holdings.

The Small Railroad Provisions apply to railroads which meet the criteria of paragraph (1) but not of paragraphs (2) and (3) of the below definition (40 CFR 1033.901):

1. To be considered a small railroad, a railroad must qualify as a small business under the Small Business Administration's regulations in 13 CFR part 121.
2. Class I and/or Class II railroads (and their subsidiaries) are not small railroads.
3. Intercity passenger and/or commuter railroads are excluded from this definition of small railroad. Note that this does not exclude tourist railroads.

A railroad is considered a small business if its headcount (including its affiliates) is less than 1,500 employees, as identified in 13 CFR 121. Entities are considered affiliates when one controls or has the power to control the other, or a third party or parties control or has the power to control both (13 CFR 121.103). As stated in our response to request 3, GWI and its U.S. railroad affiliates have 2,833 employees as of June 2018.

Therefore, GWI does not meet the requirements of, and is consequently excluded from, the Small Railroad Provisions.

*Response provided by:*

Nicholas Pecenka, AVP, Safety and Reporting

*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer

## **GWI RESPONSE TO EPA REQUEST 7**

- 7. Provide a copy of all current, valid certificates of conformity (obtained in accordance with 40 C.F.R. 1033 Subpart C) for any locomotive owned and/or operated by G&W and/or any of its subsidiaries or holdings.**

Subject to and without waving its objections, GWI responds as follows:

The EPA requires locomotives built after 1973 (that have remanufactured engines as defined in 40 CFR 1033.901) and new locomotives (built after 2001) to meet tiered emission standards. GWI's U.S. affiliate railroads own 877 locomotives, however, as of June 30, 2018, only 142 of the locomotives in GWI's U.S. affiliates' fleets are required to meet the tiered emission standards. All 142 of said locomotives have been equipped with emissions-controlled component kits to meet the regulatory standard but were not *manufactured* (as explained below) by GWI or its affiliates.

The definition of a manufacturer for purposes of 40 CFR 1033.Subpart C can be found in three places.



First, *manufacturer* has the meaning given in section 216(1) of the Clean Air Act with respect to freshly manufactured locomotives or engines. In general, this term includes any person who manufactures a locomotive or engine for sale in the United States or otherwise introduces a new locomotive or engine into commerce in the United States. This includes importers who import locomotives or engines for resale.

Second, the CFR cites this Clean Air Act definition:

- (1) The term "manufacturer" as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

Third, a locomotive manufacturer is defined in 40 CFR § 1033.901 as: “[m]anufacturer/remanufacturer means the manufacturer of a freshly manufactured locomotive or engine or the remanufacturer of a remanufactured locomotive or engine, as applicable.”

GWI’s affiliated locomotive shops install emissions-controlled component kits into rebuilt engines, but they do not meet the definition of manufacturer/remanufacture under these standards. The locomotives brought into the appropriate tier level per 40 CFR § 1033.901 are done with a kit provided by a manufacturer with a certificate of conformity. These locomotives are included under the kit manufacturer’s certificates of conformity per 40 CFR § 1033.805 (c). GWI does not own the certificates of conformity, but rather GWI’s locomotives are included in the locomotive family of kit manufactures. GWI is therefore not required to keep copies of all certificates, and the certificates have never been requested per 40 CFR § 1033.1.

GWI affiliate railroads are able to produce the EPA certificates of conformity for 54 of the 142 locomotives. Copies of those certificates can be found in the document “7\_COC-Data.pdf” in the “7\_COC” file folder on Flash Drive A. The remaining 88 certificates can be acquired from the following certificate holders:

53	General Electric (GE)
17	CSX
7	Electro Motive (EMD)
6	Motive Power (MPI)
4	National Railway Equipment (NRE)
1	Hatch & Kirk (H&K)

*Response provided by:*

Nicholas Pecenka, AVP, Safety and Reporting

Eugene Evans, AVP, Mechanical

Tammy McKay, Manager, Mechanical


*Additional persons consulted in the above response:*

David Brown, Chief Operation Officer

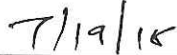
Allison Fergus, General Counsel and Corporate Secretary

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



David A. Brown  
Chief Operating Officer  
Genesee and Wyoming Inc.

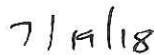


Date

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to 18 U.S.C. §§ 1001 and 1341.



David A. Brown  
Chief Operating Officer  
Genesee and Wyoming Inc.



Date



## **APPENDIX A**

### **TABLE OF CONTENTS**

I certify that this document and each of the documents listed below has been scanned and cleared for viruses by McAfee Virus Scanner.

#### **FLASH DRIVE A:**

*The contents of Flash Drive A are as follows. Further descriptions of each responsive material document listed below can be found in the narrative responses in the preceding letter.*

#### **GW EPA SUBMISSION**

- GW Response to EPA Request (Current File) – Narrative response to EPA’s request.
- 1\_MAPS – Bates stamped GWI\_000001-000096 – Includes maps depicting all rail lines, rail yards, and rail maintenance shops owned, leased, and/or operated by GWI’s affiliate railroads in the United States
- 2\_RAILROADS
  - 2a – Bates stamped GWI\_000097-000099 – Includes a list of the railroads that are directly or indirectly controlled by and/or affiliated with GWI
  - 2b – Bates stamped GWI\_000100-000114 – Includes a list of each railroad’s affiliation or relationship with GWI
  - 2c – Bates stamped GWI\_000115-000117 – Details each railroad’s number of employees
  - 2d – Bates stamped GWI\_000118-000120 – Details each railroad’s class of operation
  - 2e – Bates stamped GWI\_000121-000123 – Details each railroad’s number of operating locomotives
  - 2f – Empty, data located on Flash Drive B
  - 2g – Bates stamped GWI\_000124-000140 – Details the location of each railroad’s rail lines and yards, labeled on the map in request 1
- 3\_REVENUE – Empty, data located on Flash Drive B
- 4\_CLASSIFICATION – Empty, data located on Flash Drive B

- 5\_SHOPS – Bates stamped GWI\_000141-000148 – Details the locations of all locomotive shops GWI’s affiliate railroads own, lease, or control
- 6\_SRP – Empty, no supplemental data needed
- 7\_COC – Bates stamped GWI\_000149-000166 – Includes copies of certificates of conformity
- EPA Appendices – Includes copies of the EPA’s Appendix AB and Appendix C for easy reference

#### FLASH DRIVE B:

*The contents of Flash Drive B are as follows. Further descriptions of each responsive material document listed below can be found in the narrative responses in the letter “GWI Confidential Response to EPA Request,” also found on Flash Drive B.*

#### GW EPA SUBMISSION CBI

- GWI Confidential Response to EPA Request – Narrative response to EPA’s request that has been deemed to contain confidential business information.
- 1\_MAPS – Empty, data located on Flash Drive A
- 2\_RAILROADS
  - 2a – Empty, data located on Flash Drive A
  - 2b – Empty, data located on Flash Drive A
  - 2c – Empty, data located on Flash Drive A
  - 2d – Empty, data located on Flash Drive A
  - 2e – Empty, data located on Flash Drive A
  - 2f – Bates stamped GWI\_CONFIDENTIAL\_000001-000004 – Details each railroad’s operating revenue for 2017
  - 2g – Empty, data located on Flash Drive A
- 3\_REVENUE – Bates stamped GWI\_CONFIDENTIAL\_000005-000008 – Details total annual carrier operating revenue for calendar years 2016 and 2017 and total number of employees
- 4\_CLASSIFICATION – Bates stamped GWI\_CONFIDENTIAL\_000009-000010 – Provides revenue information needed to support GWI’s classification as a Class II railroad



- 5\_SHOPS – Empty, data located on Flash Drive A
- 6\_SRP – Empty, no supplemental data needed
- 7\_COC – Empty, data located on Flash Drive A
- EPA Appendices – Includes copies of the EPA's Appendix AB and Appendix C for easy reference